

California Regional Water Quality Control Board
Santa Ana Region

February 25, 2000

ITEM: 20

SUBJECT: Executive Officer's Report

DISCUSSION:

1. **TMDL for Fecal Coliform in Newport Bay** – On April 9, 1999, the Regional Board adopted Resolution No. 99-10, which amended the Water Quality Control Plan for the Santa Ana River Basin (Basin Plan) to establish a Total Maximum Daily Load (TMDL) for fecal coliform in Newport Bay. The TMDL is the maximum load of fecal coliform that can be discharged to the Bay while assuring that the Bay's beneficial uses (e.g., recreation and shellfish harvesting uses) are protected. This TMDL was approved by the State Water Resources Control Board (SWRCB) on July 15, 1999, and by the Office of Administrative Law (OAL) on December 26, 1999, whence the TMDL became effective. For your information, the TMDL has also been submitted to the U.S. EPA, which has already endorsed it; formal approval is anticipated in the near future.

As you know, Board staff worked closely with the members of the Newport Bay Watershed Management and Executive Committees in the development of this TMDL. All parties sought to recommend a TMDL that would fulfill its legal obligations to achieve water quality objectives and protect beneficial uses, but which also recognized the significant uncertainties and difficulties associated with the fecal coliform problem. The adopted TMDL reflects consensus on a phased approach, whereby plans for further studies are to be submitted in accordance with a specific schedule, and whereby a detailed implementation plan will be developed later, based on the results of these studies. The study results may also indicate the need for revision of the TMDL; the Regional Board has committed to the review of the TMDL, as warranted. A copy of the adopted TMDL is attached for your reference. (Attachment A)

Attachment B is a letter I have sent to the watershed stakeholders requesting technical reports that provide plans for further study and analysis, as required by the TMDL. Please note that, in some cases, the plans required by the TMDL have already been or are being developed as part of the Health Risk Assessment (HRA) being conducted for the Bay. Please be aware that Regional Board approval of all the plans is required. We intend to present the proposed and, in some cases, completed plans to the Regional Board at the earliest opportunity, following the submittal of the response to the request for information. As

discussed in the attached letter, staff intends to recommend that the Regional Board accept the completed plans for modeling bacterial inputs and fate and for assessment of the recreational beneficial use of the Bay. Regional Board consideration of the plans will take place at a public hearing, and the Regional Board may require changes based on the input provided.

2. Administrative Civil Liability Complaint for E. L. Yeager Construction Co. –

On December 1, 1999, I issued an administrative civil liability complaint to E. L. Yeager Construction Co. (Yeager), for violations of the State's General Construction Activity Storm Water Permit (Permit). Yeager is the contractor for the U. S. Army Corps of Engineers (Corps) on the Santa Ana River Main Stem Project. Yeager had submitted a Notice of Intent (NOI) for the project to obtain coverage under the Permit. The complaint alleged that Yeager had failed to prepare a Storm Water Pollution Prevention Plan (SWPPP) as required by the Permit.

In response to the complaint, Yeager advised us that their agreement with the Corps specified that the Corps would prepare a SWPPP for the project. The Corps acknowledged that this was their responsibility, and that they had been late in developing the SWPPP. (A SWPPP for the project was developed and implemented subsequent to the issuance of the complaint.) Further, the Permit places responsibility for SWPPP preparation on the project "owner," and the NOI submitted by Yeager identified the Corps as the owner. Thus, the Corps, rather than Yeager, was the party culpable for this violation.

As you may be aware, the State's ability to impose administrative civil liability on federal agencies has been severely limited by court decisions. In addition, recent congressional action dictated that federal agencies not pay penalties to States without specific congressional authorization. Thus, re-issuance of the complaint to the culpable party (the Corps) is not a viable option in this case. Since the violation cited in the complaint has been corrected, staff recommends that no further action be taken in this matter.

3. Administrative Civil Liability Complaint for The Irvine Company – On

November 15, 1999, Board staff received a complaint from a member of the Alliance to Rescue Crystal Cove, regarding a strong chlorine odor in a discharge to Los Trancos Creek in the Crystal Cove area of Orange County. Investigation by Board staff indicated that a subcontractor (Griffith Company) for The Irvine Company had discharged approximately 3,500 gallons of highly chlorinated water from a newly installed domestic water supply pipeline during disinfection and hydrotesting. This type of discharge is regulated under Board Order No. 98-67 and Monitoring and Reporting Program No. 98-67-007 (Permit) issued to The Irvine Company. The Irvine Company violated the terms of the Permit by

discharging polluted water (highly chlorinated water), by failing to monitor the discharge, and by failing to report the discharge.

On December 29, 1999, I issued ACL Complaint No. 99-90 to The Irvine Company, assessing liability in the amount of \$22,030 (\$20,000 for the Permit violations and \$2,030 for staff time). On January 5, 2000, The Irvine Company/Griffith Company paid the assessed amount and waived their right to a hearing, so this matter is now resolved.

4. **Arauz Trucking Company, Manure Disposal at 22260 Kinney Street, Mead Valley, near Perris** – On October 12, 1999, Board staff received a complaint that a significant amount of manure was being discharged on a residential property located at 22260 Kinney Street, in the Mead Valley area near Perris. On October 13, 1999, Board staff inspected the site and observed Arauz Trucking Company dumping manure on the property.

The manure that had been applied on the central portion of the 2.51-acre property was estimated to be about six inches deep. However, a large amount of manure had also been dumped in a dry drainage channel to a depth of 5 to 6 feet. This drainage channel is tributary to Reach 3 of the San Jacinto River, which is a tributary to Canyon Lake, a public drinking water source. Canyon Lake flows into Lake Elsinore. The complainant informed Board staff that the discharge of manure at the property had been occurring for the past two months. Board staff estimated that more than 1,500 tons of manure (at least 150 truckloads) had been discharged at this site.

On October 26, 1999, Administrative Civil Liability Complaint (ACLC) No. 99-85 was issued by the Executive Officer to Arauz Trucking Company. On November 19, 1999, the Board affirmed ACLC No. 99-85 in the amount of \$99,000. The Board stipulated that \$50,000 would be suspended if cleanup were completed by December 1, 1999. However, no cleanup work was initiated by December 1, 1999. An attorney for Arauz Trucking Company submitted an appeal of the Board's action to the State Water Resources Control Board on December 12, 1999. Because an appeal was filed, we have not taken action to collect the \$99,000 assessment.

Because the cleanup had not begun, I issued Cleanup and Abatement Order No. 00-26 January 25, 2000. The order required Arauz Trucking Company and the owner of the property to remove all manure from the drainage channel by January 28, 2000, and all manure from the property by February 7, 2000. Although some manure was moved out of the drainage channel and a couple of truckloads of manure were reportedly removed from the property in January, a significant amount of manure still remains in the drainage channel and almost all of the manure still remains on the property.

In order to clean up the manure and abate the threat to the beneficial uses of Canyon Lake and Lake Elsinore, a request was submitted to the State Board on January 28, 2000 for \$20,000 from the Cleanup and Abatement Account (CAA). Board staff is currently selecting a hauler to remove the manure from the property. Efforts will then be made to recover the costs from Arauz Trucking Company and the property owner. Arauz Trucking Company and the property owner could also be liable for a civil liability assessment of up to \$5,000 per day for each day the cleanup and abatement order is violated, beginning January 28, 2000. Staff will provide a further update at the Board meeting on the status of the cleanup.

5. **Status of Submittal of Dairy Annual Reports** – The general waste discharge requirements (Order No. 99-11) for concentrated animal feeding operations (CAFOs) that the Board adopted in August 1999, require that all CAFOs submit an annual report to the Board by January 15. During the last week of December 1999, staff mailed annual report and manure tracking manifest forms to the 320 CAFOs within the Region. The annual reports facilitate tracking of dairy-related animal populations and manure information, including the amount of manure spread on disposal and crop lands, manure hauled away, and manure stockpiled at year end. The manure tracking manifests document the amount of manure hauled, destination of the manure, and the name of the hauler. One hundred eighty-five annual reports were submitted on time. An additional 60 reports were submitted late. The remaining 75 CAFOs that are delinquent in submitting their report were sent a "Failure to Submit an Annual Report" notice. This notice informed the CAFOs that if they did not submit their reports by February 22, 2000, an administrative civil liability complaint would be issued, assessing \$50 per day for each day after January 15, 2000 that the report was late. Staff is currently reviewing the annual reports and will provide a summary to the Board when the review is complete.

6. **Lockheed Martin Corporation's petition for review of Cleanup and Abatement Order No. 97-58** – On July 18, 1997, the Board adopted Cleanup and Abatement Order (CAO) No. 97-58, requiring Lockheed Martin to address the perchlorate plume that originated from Lockheed Martin's solid propellant rocket motor production and testing facility in Redlands. The perchlorate plume has migrated about seven miles and has impacted several municipal drinking water wells. Since the Board adopted the CAO, Lockheed Martin has proceeded to conduct the work required by the order.

On August 15, 1997, Lockheed Martin petitioned the State Board for review of CAO No. 97-58. However, Lockheed Martin indicated that additional data, which were being collected at the time the petition was being filed, might obviate the

need for the petition to be heard by the State Board. Therefore, Lockheed Martin requested that the petition be held in abeyance.

On August 30, 1999, the State Board reactivated the petition at Lockheed Martin's request. The State Board also informed Lockheed Martin that the petition was not complete. The items that were missing included a statement of points and authorities and a copy of a request to the Regional Board to prepare the administrative record.

On September 29, 1999, Lockheed Martin submitted its memorandum of points and authorities in support of its petition. Lockheed Martin stated that the Regional Board issued CAO No. 97-58 inappropriately because there was no known effective treatment technology for perchlorate. Lockheed Martin stated that it is unfair to place them in such an untenable position. Lockheed Martin stated that all they can do under the circumstances is submit such technical and monitoring reports as the Regional Board may reasonably require. Therefore, Lockheed Martin requested that the order be re-issued as an "investigation" order under Water Code Section 13267, an order designed specifically to elicit the submission of technical and monitoring reports.

On December 2, 1999, the State Board concluded that the petition failed to raise substantial issues that were appropriate for review by the State Board. Accordingly, the petition was dismissed. On December 29, 1999, Lockheed Martin informed the State Board that they would file a petition for writ of mandate in Superior Court in connection with the State Board's dismissal of Lockheed Martin's petition for review. Lockheed Martin subsequently filed a petition for writ of mandate and requested the Regional Board to prepare a copy of the administrative record for the Court before the hearing date. The State and Regional Board will be represented in this matter by the state Attorney General's office. A hearing date has not yet been set and briefs have not yet been filed.

7. **New Office Space** – As we have previously reported to you, an increase in our budget for this fiscal year has allowed us to hire a number of additional staff. The additional staff that we have already hired have filled our existing office space, and we still need to hire eight additional staff. Therefore, we have initiated the process to obtain additional office space. Unfortunately, the California Tower building is full, and there is no opportunity to immediately obtain additional space here. We have submitted the necessary information to the Department of General Services (DGS), which handles space management for all State agencies, requesting that they find a long-term solution to our space needs. We understand that in these situations DGS will consider moving a smaller tenant agency out of the building to accommodate a larger tenant agency (we are one of the larger tenants in the California Tower). We also understand, however, that this process typically takes at least one year before additional space can be made available.

Therefore, we have initiated a parallel process with DGS to obtain additional space on a temporary basis (until a long-term solution can be implemented). This will involve a short-term lease of additional space in a separate building. There is vacant space in buildings adjacent to the California Tower, and we are hoping to obtain space nearby. Needless to say, moving some of our staff into a separate building is an undesirable situation, but it is unavoidable. We are hopeful that we can obtain temporary space within 60-90 days, so that we will have room for new staff as they are hired. We anticipate that as many as 12 people may need to move into an off-site location before we can expand our California Tower space.

Gerard J. Thibeault
Executive Officer